

RM-8872

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 27, 1996

1212-011

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By Hand

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**RE: Comments of Hardy & Carey, L.L.P. in Support
of Proposed Amendments
RM-8872 MM Docket No. 96-142**

Dear Mr. Caton:

Enclosed please find the original plus 5 copies of the Comments of Hardy & Carey, L.L.P. to be filed in the above referenced docketed proceeding. I have also enclosed an extra copy for date stamping and return in the self-addressed, stamped envelope included for your convenience.

If you should require further assistance, please feel free to direct any questions you might have to the undersigned.

Respectfully submitted,



Ashton R. Hardy

ARH/vm

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 30 1996

In the Matter of

**Amendment of Sections 73.1125(a)
and 73.3526(b) of the
Commission's Rules**

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) **RM-8872**
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MM Docket No. 96-142

To: Chief,
Policy & Rules Division

**Comments of
Hardy & Carey, L.L.P.
In Support
of Proposed Amendments**

September 27, 1996

**Ashton R. Hardy
Bradford D. Carey
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COMMENTS

Hardy and Carey, L.L.P., on behalf of its clients, hereby supports the petition of David Tillotson for the amendment of Section 73:1125(a) (the "Main Studio Rule") and 73:3526(b)(1) (the "Public File Rule") of the Commission's rules. Specifically, Hardy & Carey supports amending the current Main Studio Rule by replacing the requirement that AM, FM and television stations maintain a main studio within their principal city contour with the more flexible requirement that the main studio location be reasonably accessible to residents of a station's community of license. Hardy & Carey also supports amending the Public File Rule to permit stations to maintain their public files at their main studio, wherever located, in place of the current requirement to maintain the public file at a location within the community of license.

I. The current Main Studio Rule fails to recognize the new realities of broadcast station ownership.

The Telecommunications Act of 1996 reconfigured the broadcast ownership landscape by relaxing station ownership and other rules, in order to benefit the public by enhancing competition in the broadcast market. Through this highly competitive environment, the public stands to benefit by way of greater diversity of programming, lower advertising costs and the construction of additional broadcast stations. In its current form, the Main Studio Rule stands as an impediment to competition by imposing an inflexible and unneeded requirement for station owners to maintain a main studio within the principal community contour, or primary reception area, of each station.

With the relaxation of the Commission's rules, station licensees must battle for competitive ground to remain viable. A recent and continuing example of the future of broadcast competition has been the flurry of radio station ownership changes following a relaxation of the Commission's rules to allow a single entity to own between 5 and 8 radio stations in the same radio market. As the broadcast ownership landscape has changed, it has become apparent that, in order to reap the benefits of competition, the Commission must apply its rules governing station operations equally to all owners and must write those rules to empower rather than hinder station owners in their battle for competitive ground. The current Main Studio Rule does neither. Instead, it is restrictive and unfairly puts station owners on different footing.

For example, a broadcaster that owns one or two radio stations with primary studios outside the principal city contours must still meet the Main Studio Rule's requirement to maintain "main studios" within the city contours and separate from its primary studios. The cost of maintaining and staffing these additional studios is not insignificant. Renting or purchasing appropriate facilities is only the tip of the iceberg. Property taxes, electricity, phone and water bills, and hiring and paying the salaries of two staff members to run the additional studio -- all these expenses add up quickly, and may cost the station owner up to \$100,000 per year, depending on geographic location. The increased costs thus imposed are especially burdensome on owners trying to remain competitive with larger groups of owners, who have considerably more flexibility and resources to bring to bear in accommodating the burdens created by the rule.

As a result of the disproportionate burden the rule places on smaller broadcasters, the rule threatens the existence of those broadcasters, while discouraging new individuals from building stations. In this way, the rule risks serious harm to the public interest in diversity of voices in the broadcast market. To avoid this result, the Commission should infuse the Main Studio Rule with additional flexibility to permit all broadcasters to take advantage of the efficiencies of collocation and consolidation demanded by today's competitive market.

Making the current Main Studio Rule more flexible would be in keeping with the Commission's justifications for previously amending the rule. In 1987, the Commission expanded the Main Studio Rule to account for rapid advances in communications technology. *See Amendment of Main Studio and Program Origination Rules*, 62 R.R. 2d 1582, 1587-88 (1987). Prior to those proceedings, the rule required stations to locate their main studio in their community of license. However, technological advancements which permitted stations to broadcast from other than their main studio led the Commission to expand the main studio rule and permit broadcasters to locate their main studios within stations' "principal community contours." The recent changes in broadcast ownership are a milestone equivalent to the technological advances which dictated the rule change a decade ago. Hardy and Carey's proposed rule change will promote flexibility and reasonableness in main studio location requirements, providing a firm footing for competition, and thus permit broadcasters to serve their communities and meet an ever-expanding "local service obligation." Accordingly, the public interest will be served by the Commission's

further relaxation of the Main Studio Rule to afford station owners flexibility in choosing main studio locations, as long as the studio is situated so as to be reasonably accessible to residents of the station's community of license.

II. The current Public File Rule places harsh and unnecessary competitive burdens on station licensees and discourages public access.

Like the Main Studio Rule, the public file location rules for commercial and noncommercial stations, which have remained unchanged for well over a decade, have not kept pace with the whirlwind ownership changes in the broadcast market. In today's newly competitive broadcast market, multi-station owners are increasingly forced to consolidate broadcast operations, sales efforts, and facilities to obtain and keep a competitive edge and to remain economically viable. The Commission's rules assist in this regard, permitting owners to consolidate the broadcast operations of several stations at one centralized studio, as long as that studio is within the principal community contour of each station. Notwithstanding this common and growing practice, owners remain subject to the Commission's rules at sections 73:3526(d) and 73.3527(d), which require commercial and noncommercial station licensees to maintain public files in each station's respective community of license.

In today's competitive broadcast market, the expense and inconvenience of maintaining a separate public file places an unacceptable financial burden on station licensees. The current Public File Rule forces broadcast station owners, particularly multi-station licensees, to engage in a pointless yet expensive and time-consuming balancing act which is not consistent with the Commission's stated commitment to public access. More and more often, station licensees are forced to embark on a

convoluted and nonsensical campaign to establish and maintain a station's public file. Licensees whose broadcast operations are outside their respective communities of license must consult legal counsel and spend time and money making arrangements with acquaintances at appropriate public locations to set up the public file in their community of license. They must struggle to obtain assurances of hours of operation, compliance with the rules governing access to the file, and arrangements for copying. Broadcasters may need to obtain more than one location for the file, if they are unable to find one location that can meet all of the Commission's requirements. Once these issues are resolved, broadcasters must put in place procedures to assure the public file is kept up to date, and arrange for periodic checks on the content of the file and on the access procedures the file custodian is observing.

Ironically, in spite all of these efforts by broadcasters, the Public File Rule often does not permit the public ready access to the files or meaningful participation in Commission licensing proceedings. People who wish to view the station's public file too often face a confusing array of stations, owners, and public file locations.

The current outdated Public File Rule only contributes to the public's confusion. For example, a multi-station licensee may have some stations with studios in their respective communities of license with public files at those studios. The same licensee may operate consolidated broadcast operations at a main studio for two or three other stations, whose communities of license are distant from the studio. The public files for these stations are, under the Public File Rule, scattered to the appropriate communities of license. Typically, an individual goes to a station's studio to access

the record, and only then finds out the varied locations of the files. Gaining access to public files becomes a daunting and frustrating campaign, and discourages access. By complying with the rule, owners inevitably make accessing public files more difficult. The result is limited access and less participation in the licensing process - in direct conflict with the rules' stated purposes. In contrast, by permitting a station owner to maintain the public file at its main studio, regardless of the studio's location, a less confused public will once again have a realistic opportunity to readily access files and participate in the licensing process of broadcast stations.

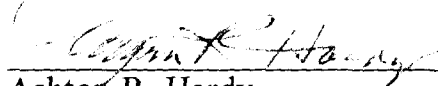
Conclusion

IN VIEW OF THE ABOVE, Hardy & Carey, L.L.P. urges amendment of Sections 73:1125(a) and 73.3526(d) of the Commission's rules as follows:

(i) to delete the requirement of the main studio rule that AM, FM and television stations maintain a main studio within their principal city contour and to provide instead that "every AM, FM and television station shall maintain a main studio which is so situated as to be reasonably accessible to residents of the station's community of license;" and

(ii) to delete the requirement of the public file rule that stations which do not have their main studios in their community of license maintain their public file at an accessible location within their community of license and to provide instead that "the public files of all stations are to be located at the station's main studio."

Respectfully submitted:

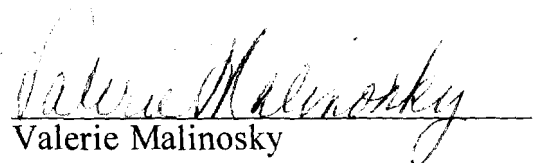

Ashton R. Hardy
Bradford D. Carey
Hardy & Carey, L.L.P.

CERTIFICATE OF SERVICE

I, Valerie Malinosky, a secretary in the law firm of Hardy & Carey, L.L.P., do hereby certify that a copy of the above and foregoing Comments of Hardy & Carey, L.L.P. in Support of Proposed Amendments has been served on the following by mailing a copy of same via U.S. Mail, postage prepaid, this 30th day of September 1996, addressed as follows:

David Tillotson
3421 M Street, N.W.
Suite 1739
Washington, DC 20007

Lynn Remly *
Chief, Policy and Rules Division
Federal Communications Commission
2000 M Street, Room 480
Washington, DC 20554


Valerie Malinosky

*By Hand

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